

Serial No.: 09/698,118

Docket No.: KCC-14,607

**REMARKS**

Upon entry of the present amendment the claims under consideration remain 22, 26-37, and 39. No Claims have been amended by the present response. The Detailed Action of 10 February 2003 will now be addressed with reference to any headings and section numbers contained therein.

**Claim Rejections - 35 U.S.C §103**

Per section 3 of the Detailed Action, Claims 22 and 26-37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,883,028 to Morman et al. (Morman '028) in view of U.S. Patent No. 5,114,781 to Morman (Morman '781) and U.S. Patent 6,129,801 to Benson (hereinafter "Benson"). These rejections are respectfully traversed.

The Office has previously admitted in the Detailed Action of 05 November 2002, at section 1, that Morman '028 and Morman '781 fail to teach a biaxial elastic stretch, breathable laminate obtained by means other than necking. With regards to Claim 22 it is the contention of the Detailed Action that "Benson teaches that neckable material can be necked via a process that crepes a web" (page 4, second paragraph). The Detailed Action goes on to state that "because creping affords stretch properties as well as softness to a nonwoven, it would have obvious to use a "creping process to neck the nonwoven of Morman '028" (id.). These statements evidence a fundamental misunderstanding of the processes of necking and creping. The processes are two separate entities and are not equivalent. Necking involves a pulling of the web to stretch it in one direction (generally Machine Direction) and narrow it in a perpendicular direction (generally CD) (see specification page 4, line 18 and page 13, line 14). Creping generally involves an application of the web to a roller and a subsequent mechanical removal from the roller, resulting in a particular type of puckering or crinkling of the web to shorten it in the Machine Direction. One cannot "crepe to neck" nor "neck to crepe". Due to this fundamental misunderstanding

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evidenced by the analysis of the Detailed Action, Applicants respectfully request withdrawal of the present rejections and the allowance of the present Claims.

It is further noted by Applicants that Benson does not teach creping *per se*, but rather a two stage process of fixing/stabilizing its previously necked web material dimension in the Cross Direction then mechanically compressing the necked and fixed web in a process referred to as "micrexing" resulting in a mechanically distorted web alternatively referred to by the Walton references (cited by Benson at col. 7, line 40) as "microcreped" or "microcondensed" (Walton '778 and '540) and "crinkled without imposing an over-all crimp or crepe to the web itself" (Walton '405). Clearly therefore it would be assumed by a person having ordinary skill in the art that a laminate obtained from the material of Benson would be qualitatively different than the material of the presently claimed invention.

It is further respectfully submitted that no suggestion of combinability regarding the advantages of softness and biaxial stretch and retraction for a breathable elastic laminate are given by the references themselves. Thus, the proffered motivation for the combination of the cited references to achieve the present invention is a *post hoc* rationalization which fails to establish a *prima facie* case of obviousness. Based on this lack of a *prima facie* case of obviousness Applicants also respectfully request withdrawal of the present rejections and the allowance of the present Claims.

Claims 23 and 26-36 depend from Claim 22 and incorporate all limitations thereof. Per the above discussion, the cited references themselves are not believed to provide any suggestion combinability to achieve the presently claimed invention of Claim 22. Therefore these dependent Claims are also believed to be allowable.

Specifically, with regards to Claims 29-35, the Detailed Action states that while "the claimed stretch ratios are not explicitly taught by [the art cited] it is reasonable to presume" that such limitations are met by a combination of Morman '028, Morman '781 and Kadolph et al. Applicants traverse the basis of this rejection, respectfully noting that Kadolph et al. is not cited for the initial basis of these rejections at the start of numbered section 3. Nor does the Detailed Action contain any explanation of the teachings of Kadolph et al. with respect to how the present rejections are applied. Applicants therefore respectfully

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request withdrawal of the present rejections and the allowance of the present Claims. In the alternative, Applicants request that the finality of the present Office Action be withdrawn and that an adequate explanation of the rejection be given to the Applicants in a subsequent Nonfinal Action.

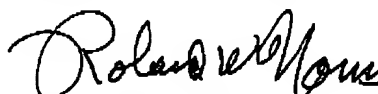
Per section 4 of the Detailed Action, Claim 39 is rejected as obvious over Morman '028 in view of Morman '781 and Benson and further in view of Roe et al, U.S. Patent No. 5,554,143 (hereinafter Roe). Per the above discussion, Independent Claim 37 is believed to be allowable because no *prima facie* case of obviousness has been made out with respect to that Claim. Claim 39, as dependent from Claim 37 and incorporating all limitations thereof, is also therefore believed to be allowable.

#### Conclusion

Applicants believe that this case is now in condition for allowance. A notice to that effect is earnestly solicited. If the Examiner feels that any issues remain upon consideration of the present amendment, the Examiner is invited to contact Applicants' undersigned attorney to discuss the case.

Favorable consideration is requested.

Respectfully submitted,



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